IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

CRL.A.No. 2114 of 2004(A)

SC.132/2003 of ADDL.SESSIONS COURT-II, KOZHIKODE
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APPELLANT: THE APPELLANT.

VIJAYN,S/O.KUTTAN PILLAI,
CONVICT NO.962,
CENTRAL PRISON,
KANNUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: THE RESPONDENT.

STATE OF KERALA.

BY PUBLIC PROSECUTOR (SRI.C.M.KAMMAPPU)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON ON 18/08/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & K. HEMA, JJ.

Crl.A.No.2114 of 2004 B

Dated this the 18th day of August, 2007.

JUDGMENT

Hema, J

The appellant was convicted and sentenced by the Additional Sessions Court to undergo rigorous imprisonment for life and to pay a fine of Rs.20,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of one year. The fine amount, if realized, was directed to be paid to PW6, the widow of the deceased as compensation under section 357(3) Cr.P.C. The said conviction and sentence are challenged in this appeal.

2. According to prosecution, on 26.12.2001 at about 9 p.m. the accused and deceased Saji who were friends had some quarrel between each other from the veranda of the first floor of the building owned by one Damodaran. The accused with intention to commit murder of deceased Saji, due to enmity, pushed him down over the parapet from the first floor of the building to the ground floor by catching his neck and lifting his legs and thereby committed murder. Deceased Saji sustained grievous injury on the head and spinal cord and succumbed to injuries.

3. To prove the prosecution case, PWs 1 to 13 were examined and Exts.P1 to P13 were marked. MOs1 to 5 were also marked. On the side of the accused Exts. D1 to D4 were marked. The accused while questioned

under section 313 Cr.P.C. stated that there was a scuffle between PW1 and the deceased and the deceased fell down and sustained injuries. But PW1 cooked up a story stating that the deceased was pushed down by the accused with intention to commit murder etc.

4. On an analysis of the evidence on record, the court below found that the deceased Saji died due to injuries sustained by him, as revealed from the post mortem certificate Ext.P3 issued by PW7, the doctor. The court below also believed the evidence of PW1, the sole eye-witness to the occurrence and held that there was a quarrel between accused and deceased Saji and the deceased was pushed down from the first floor to the ground, during the quarrel. Learned Addl. Sessions Judge was of the view that this act of the accused was with intention to commit murder. The court below found that it is clear from PW1's evidence that the accused purposefully pushed down deceased Saji knowing the consequence of the fall from the building and that too, without heeding to the request of PW1 and PW2 to stop altercation and scuffle and hence the intention was to kill deceased Saji. The accused was accordingly found guilty of offence under section 302 of IPC.

5. At the time of hearing, learned counsel appearing for the accused submitted that he is not challenging the conviction of guilt though, according to him, there are certain discrepancies in the evidence. On going through the evidence and also on going through the judgment of the court below, we do not find any reason to interfere with the finding that the

incident occurred while deceased Saji was pushed during a quarrel between himself and the deceased.

6. Learned counsel appearing for the accused, however, argued that even if the entire prosecution evidence is accepted, the offence made out only falls under section 304(ii) of IPC or under section 323 of IPC. He pointed out that as per the evidence of PW1, accused and deceased were quarreling with each other and the accused pushed deceased Saji and he happened to fall down from the first floor to the ground floor. It was also pointed out that, when PW1 intervened, the accused told him that the accused and the deceased were friends and that he need not interfere in their quarrel. Relying upon this statement made by PW1, it was argued that there was absolutely no motive for the accused to commit murder of deceased Saji, but it so happened that deceased Saji happened to topple down when he was pushed down in the course of the quarrel because of the peculiar nature of the parapet and place of occurrence.

7. Learned counsel appearing for the accused submitted that parapet wall which is situated by the side of the veranda was having a height of only 72 c.m. and it is likely that if a person is pushed, he will fall down from the first floor to the ground since he cannot be retained in the veranda as the parapet wall is not sufficient high. Therefore, it cannot be treated as a case where the accused was deliberately pushing down deceased Saji with intention to commit murder. The evidence of PW1 will only reveal that the deceased was only pushed during quarrel and he was not lifted by force by

holding his leg or neck. Though the prosecution case is that deceased Saji was pushed down over the parapet wall by catching hold of his neck and the legs, PW1 did not say so in chief examination. On going through the evidence of PW1, it appears that during the quarrel the accused and the deceased were pushing each other and deceased Saji fell down on one such push to the ground and he sustained injuries.

8. It was also pointed out by learned counsel for the appellant that the medical evidence does not reveal that the injuries sustained by deceased Saji would be caused by catching hold of neck and leg and pushing the deceased over the parapet, as alleged by the prosecution. The nature of the injuries sustained by deceased Saji were not specifically stated by the doctor in evidence. It has also not been brought out from his evidence by the learned Public Prosecutor that the deceased could have sustained the injuries by pushing down over the parapet, by catching hold of the leg and neck as alleged by the prosecution. On the other hand, what is stated by doctor in the chief examination itself is that the injuries could be sustained by a fall. This only supports the case of the defence rather than that of the specific case of a motivated murderous attack on the deceased as alleged by the prosecution, it is submitted.

9. In the absence of anything in the evidence of the doctor to show that the injuries sustained by the deceased Saji could be caused by the deliberate act of the accused, it cannot be said that deceased Saji was pushed down by the accused in the manner alleged by the prosecution. It

can only be said to be a case where the accused pushed the deceased and he fell down from the first floor to the ground and sustained injuries. Since there is nothing in the evidence of PW1 to indicate that the accused was not motivated to see that the deceased is murdered, it cannot be said that he committed the overt act with intention to commit murder.

10. Learned counsel appearing for the accused therefore, argued that from the evidence adduced in this case, the offence committed could only be said to be one falling under section 304(ii) IPC. On going through the evidence in detail, it appears that this is a case where accused had pushed deceased Saji with the knowledge that it is likely to cause death, but it cannot be attributed intention to commit murder. It is possible that he would fall done to the ground and it will cause his death. It cannot be said that the accused had pushed him with intention to cause death. It cannot also be said that the act committed by the accused was with the knowledge to cause any bodily injury as is likely to cause death. In such circumstances, the offence made out against the accused will come only under section 304(ii) of IPC and not under section 302 IPC. The conviction is therefore altered from section 302 IPC to section 304(ii) of IPC. On consideration of the facts and circumstances of the case and that of the accused, the period of detention which the accused has already suffered in this case can be treated as sentence for the offence under section 304(ii) of IPC and it will meet ends of justice.

11. The accused/appellant is convicted for offence under section

304(ii) of IPC. The period of detention which the accused/appellant has already suffered in this case shall be treated as sentence for the offence under section 304(ii) of IPC. The Registry shall issue release memo to the Superintendent of Jail concerned to release the appellant forthwith, in case his detention is not required in any other case.

This appeal is partly allowed.

P.R. RAMAN,
JUDGE.

K. HEMA,
JUDGE.

Krs.